

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PHILIP FEI, on behalf of himself and classes  
of those similarly situated,

Plaintiff,

v.

WESTLB AG,

Defendant.

Index No.: 07 Civ. 8785 (HB) (FM)

**AFFIRMATION OF JASON  
HABINSKY**

Jason Habinsky, an attorney duly admitted to practice law in the State of New York, hereby affirms the following to be true under penalty of perjury:

1. I am an attorney admitted to the bar of this Court and am associated with Hughes Hubbard & Reed LLP, attorneys for WestLB AG (“WestLB”) and submit this affirmation in support of WestLB’s motion to dismiss the Complaint of Plaintiff Philip Fei in this action.

2. I am fully familiar with the facts and circumstances set out below based upon my personal knowledge and my review of the files maintained by my law office.

3. A true and correct copy of Plaintiff Fei’s resume is attached hereto as Exhibit A.

4. Attached hereto as Exhibit B is a true and correct copy of excerpts from self-evaluations completed by Plaintiff Fei during his employment at WestLB.

5. Upon information and belief, WestLB regularly maintains a Code of Conduct by which employees are required to abide. A true and correct copy of the Code of Conduct is attached hereto as Exhibit C.

6. Upon information and belief, employees of WestLB are required to sign an acknowledgement they will act in accordance with the Code of Conduct. A true and correct copy of the acknowledgment signed by Plaintiff Fei is attached hereto as Exhibit D.

7. Upon information and belief, WestLB regularly maintains its written employment policies in a document entitled “WestLB-US Policy Manual & Employee Handbook.” Employees are required to sign an acknowledgement that they will adhere to the policies. A true and correct copy of Plaintiff Fei’s acknowledgment is attached hereto as Exhibit E.

8. Upon information and belief, WestLB regularly maintains a policy entitled “Electronic Messaging, Remote Access and Communication” in the WestLB-US Policy Manual & Employee Handbook. A true and correct copy of this policy is attached hereto as Exhibit F.

9. Attached hereto as Exhibit G is a true and correct copy of the “E-mail/Hardware/Software Policy Consent Form” signed by Plaintiff Fei.

10. Upon information and belief, WestLB regularly maintains a policy entitled “Security Awareness Guidelines.” A true and correct copy of this policy is attached hereto as Exhibit H.

11. Attached hereto as Exhibit I is a true and correct copy of a letter sent by Hughes Hubbard & Reed LLP to Outten & Golden LLP on November 30, 2007.

12. Attached hereto as Exhibit J is a copy of the offer letter executed by WestLB and Plaintiff Fei at the beginning of his term of employment.

13. On December 14, 2007, Hughes Hubbard & Reed LLP received from Outten & Golden LLP a letter and a package of hard copies of over thirty WestLB documents that Fei removed from WestLB prior to the termination of his employment, along with a list of the documents contained therein. True and correct copies of the letter and list are attached hereto as Exhibits K and L, respectively. As the letter makes clear, these documents taken by Fei are in addition to the WestLB emails that Fei admits to forwarding to his personal hotmail account. These documents taken by Fei include: records of overtime payments made to specific WestLB employees; agendas and notes memorializing Human Resources meetings at which FLSA reclassification projects were discussed; notifications to Fei of particular employees' eligibility for overtime payments; an email authored by Fei that notified WestLB employees that they were eligible to receive overtime payments and offering to answer any related questions; a proposed WestLB policy governing payments to non-exempt employees; and a PowerPoint presentation entitled "Americas Human Resources, 2005 Year In Review," dated March 16, 2006.

Dated: New York, New York  
December 14, 2007

/s/ Jason Habinsky  
Jason Habinsky